

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- vs. -

Case No. 19-CR-227-LJV

JOSEPH BONGIOVANNI,

Defendant.

**DEFENDANT JOSEPH BONGIOVANNI'S REPLY IN OPPOSITION
TO CO-DEFENDANT PETER GERACE'S REPLY IN
OPPOSITION TO GOVERNMENT'S RESPONSE**

Defendant Joseph Bongiovanni has moved to sever his case for trial, which followed a letter docketed by the government preliminarily setting forth consent to that severance arising from both in- and out-of-court discussions. ECF Nos. 695, 697. The government responded to the motion, consenting to severance conditioned upon certain terms. ECF No. 700. Co-defendant Peter Gerace, Jr. filed a response to Bongiovanni's motion wherein he asserted that rather than severing Bongiovanni entirely for trial, the Court should instead sever certain counts such that Gerace is tried alongside Bongiovanni in a joint trial. ECF No. 703. The government replied to Gerace's filing, opposing the severance of counts. ECF No. 705. Gerace replied to that filing. ECF No. 706. Mr. Bongiovanni now files this reply to document his opposition to the proposed severance of counts.¹

First, speedy trial concerns have animated all of Mr. Bongiovanni's attempts to sever, including the most recent motion. That the government is conditionally consenting to severance in conjunction with the latest motion should not be taken to mean that speedy trial concerns have

¹ Although a reply by Bongiovanni may not have specifically been contemplated by the motion scheduling order, the need to document certain concerns on the record prompts this filing.

been alleviated *nunc pro tunc* in this case. Those same concerns dictate why, going forward, Bongiovanni must oppose Gerace's attempts to join him in a severed trial. The recent delays in this case have exclusively centered on Gerace and his attorneys—and they are still unresolved. Although the recent motions to disqualify counsel have focused on Attorney Eric Soehnlein, the underlying matter(s) has not been resolved to such a degree that it is clear Attorney Mark Foti will definitively be permitted to continue to represent Gerace going forward. This raises the concern that if severance of counts is granted in line with Gerace's request, but a further counsel issue arises for the Gerace team, Mr. Bongiovanni will again be put in a position where his trial could be adjourned for no fault of his own. Thus, severance of Mr. Bongiovanni entirely would be the practical way to protect against that.

Second, severance of counts may present discovery disclosure issues that could prejudice Mr. Bongiovanni's preparation for trial, as he is not charged with any sex trafficking count in the Second Superseding Indictment. If Mr. Bongiovanni is severed for trial, evidence of alleged sex trafficking should have no place in his trial because he is not charged with the sex trafficking count, and the government's theory of Mr. Bongiovanni's protection of Gerace appears not to encompass the alleged sex trafficking behavior, i.e. the allegation appears to be instead that Mr. Bongiovanni assisted Gerace in a drug conspiracy that operated out of Pharoah's Gentleman's Club. To include such sex trafficking material in Mr. Bongiovanni's trial would only serve to prejudice him. On the other hand, if Gerace is included in a trial of severed counts, the government's protectiveness of its witnesses and *Jencks* material leads to concerns that Mr. Bongiovanni may be restricted in what evidence he is able to view in preparation for trial solely because Gerace is a part of the trial. If that causes further delay, speedy trial issues again arise.

In conclusion, the Court should adopt the path urged by Mr. Bongiovanni and the government: to sever Mr. Bongiovanni entirely for trial to begin on February 12, 2024.

Dated: January 2, 2024
Kenmore, New York

Respectfully submitted,

S/PARKER R. MACKEY

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